

mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant is an agency of the U.S. Government and is headquartered at 99 New York Ave., NE, Washington, DC 20226. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On July 22, 2011, Plaintiff submitted a FOIA request to Defendant, by facsimile and certified mail, seeking access to the following public records:

All records of communication between any official, officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives and Kevin M. O'Reilly, a current or former employee of the U.S. Department of State currently or previously serving as Director of North American Affairs at the U.S. National Security Council.

The timeframe for the request was identified as January 1, 2009 through July 27, 2011.

6. Defendant acknowledged receipt of Plaintiff's FOIA request on August 2, 2011 and assigned the request case number 11-1049. The acknowledgement letter stated that Plaintiff could "expect to receive an answer by August 26, 2011."

7. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with Plaintiff's request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Because Plaintiff sent its request to the component of Defendant designated by Defendant to receive FOIA requests, pursuant to 5 U.S.C. § 552(a)(6)(A) this twenty (20) working day time period did not commence until ten (10) working days after Defendant's receipt of the request on August 2, 2011. Accordingly, Defendant's determination was due by September 14, 2011 at the latest.

8. As of the date of this Complaint, Defendant has failed to: (i) determine whether to comply with Plaintiff's requests; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

9. Because Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

12. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's July 22, 2011 FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to

5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: June 6, 2012

Respectfully submitted,

JUDICIAL WATCH, INC.

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